



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,513	07/30/2001	Karen Appleby	YOR920010330US1	9755

21254 7590 06/03/2004
MCGINN & GIBB, PLLC
8321 OLD COURTHOUSE ROAD
SUITE 200
VIENNA, VA 22182-3817

EXAMINER

HUYNH, KIM T

ART UNIT	PAPER NUMBER
----------	--------------

2112

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,513

Applicant(s)

APPLEBY ET AL.

Examiner

Kim T. Huynh

Art Unit

2112

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 24-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 24-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 3-8, 10-14, 16, 18-21, 24, 26-31, are rejected under 35 U.S.C. 102(e) as being anticipated by Shuster (Pub No. US20020091825)

As per claims 1, 20, 26, 30, Shuster discloses a method in a computer network of controlling an admittance of requests to at least one processing component, said method comprising:

- Evaluating an amount of traffic in said network;[0015]
- Determining whether said amount exceeds a preset threshold;[0015]
- If said amount exceeds said threshold, differentiating a type of said requests based on a content in each said request; and [0018]
- Admitting said each request only if said differentiated type meets at least one criterion for admission. [0018-0019]

As per claim 3, Shuster discloses the method further comprising

- evaluating at least one criterion in said computer network; and [0018-0019]

- Performing said software program in at least one of said one or more entry points. [0018], [0027]

As per claim 4, Shuster discloses wherein said method is embodied in a software program, wherein said admittance to said at least one processing component is gained through one or more entry points, said method further comprising activating said software program in at least one of said one or more entry points.[0018-0019], [0027], [0039-0040]

As per claim 5, Shuster discloses wherein said at least one processing component comprises a plurality of processing components, said at least one or more entry points comprises a plurality of web servers, and said activation of said software program occurs in each web server in said plurality of web servers, thereby providing an admittance method that is distributed. [0018-0019]

As per claim 6, Shuster discloses wherein said software program comprises a plugin software module. [0025], [0027]

As per claim 7, Shuster discloses wherein said at least one evaluation criterion comprises a measurement of activity on said network. [0015-0016]

As per claim 8, Shuster discloses wherein said measurement of activity comprises a measurement of requests to said at least one processing component. [0015]

As per claim 10, Shuster discloses the method further comprising prioritizing said requests within a same type, based on further refinement of said content. [0015]

As per claim 11, Shuster discloses wherein said computer network comprises a distributed heterogeneous computing environment having a dependency of said processing components represented. [0018-0019]

As per claim 12, Shuster discloses method further comprising: determining a load imposed on a dependee processing component. [0018-0019]

As per claim 13, Shuster discloses wherein said load determination is performed in a central location. [0018-0019]

As per claim 14, Shuster discloses wherein said at least one criterion for admission comprises said determined load on said dependee component. [0018-0019]

As per claim 16, Shuster discloses wherein said admission control is applied at a tier to control admittance to a next processing component along a request flow path. [0019], [0027]

As per claim 18, Shuster discloses the method further comprising:

- Determining a load of a target processing component; and [0018-0019]
- Altering a normal response to a request based on said load determination. [0018-0019]

As per claim 19, Shuster discloses wherein said admitting of said each request is distributed. [0018-0019]

As per claim 21, Shuster discloses wherein said environment comprises a network and said direction component comprises a location information relative to said network. [0027]

As per claim 22, Shuster discloses wherein said admission evaluation is distributed at multiple points in said distributed heterogeneous computing environment. [0027], [0018]

As per claim 27, Shuster discloses wherein said differentiator and said switch comprises a set of computer instructions. [0018]

As per claim 28, Shuster discloses wherein said set of computer instructions comprises a software plugin. [0018], [0027]

As per claim 29, Shuster discloses wherein said differentiator and said switching functions are distributed in said network. [0018], [0027]

As per claim 31, Shuster discloses a computer network comprising:

A request throttler for controlling an admittance of requests to at least one processing component and comprising a differentiator to evaluate a message content of each of said requests and a switch to admit said each request only if said evaluation passes at least one criterion for admission, wherein said request throttler is invoked only if an amount of traffic on said computer network exceeds a preset amount. [0018-0019], [0015], [0027]

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 9, 15, 17, 25, are rejected under 35 U.S.C. 103(a) as being unpatentable over Shuster (Pub No. US20020091825) in view of Hayashi et al. (US Patent 6,598,071)

As per claims 2, 15, Shuster discloses all the limitations as above except the method further comprising returning a message to a sender of each said request not admitted. However, Haysashi discloses method for detecting the network traffic status between the server and client. Message sent when a communications packet has been discarded due to congestion on the network. (col.5, lines 3-14)

It would have been obvious to one having ordinary skills in the art at the time the invention was made to incorporate Haysashi's teaching into Shuster's system so as to provide a communications system further able to effectively use portions of the network having low usage rates. (col.3,lines 19-33)

As per claims 9, 25, Shuster discloses all the limitations as above except wherein at least one criterion for admission comprises evaluation of a response time. However, Haysashi discloses using the average traffic or the average response time per unit of time on the path between the servers and client as a criteria for switching the server. (col.12, lines 63-67)

It would have been obvious to one having ordinary skills in the art at the time the invention was made to incorporate Haysashi's teaching into Shuster's system so as to provide a communications system further able to effectively use portions of the network having low usage rates. (col.3,lines 19-33)

As per claim 17, Shuster discloses all the limitations as above except at least one criterion for admission comprises a determination that a dependee processing component is not currently available. However, Haysashi discloses server selector based on traffic statistical information and the backup server information determines whether or not another server capable of providing service to the client yet having little traffic and capable of processing the traffic of the current server is available. (col.11, lines 14-37)

It would have been obvious to one having ordinary skills in the art at the time the invention was made to incorporate Haysashi's teaching into Shuster's system so as to provide a communications system further able to effectively use portions of the network having low usage rates. (col.3,lines 19-33)

5. Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shuster (Pub No. US20020091825) in view Applicant Admitted Prior Art (AAPA)

Shuster discloses wherein admittance of requested distribute based on a Uniform Request Locator (URL) rather than an information content of said requests. [0029]

Shuster discloses all the limitations above except the content handler comprising a Layer 4 Load Balancing (L4LB) component to distribute said requests. However AAPA discloses networks could have IP L4LB (Layer 4 Load Balancing) components which distribute the incoming TCP connections from the web browsers to the web servers that are on the network. [0005]

It would have been obvious one having ordinary skills in the art at the time the invention was made to incorporate AAPA's teaching into Shuster's system so as to have the same purpose of distributing the requests.

Response to Amendment

6. Applicant's amendment filed on 3/19/04 have been fully considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

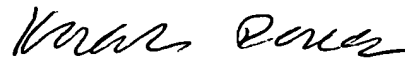
Conclusion

8. *Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Huynh whose telephone number is (703)305-5384 or via e-mail addressed to [kim.huynh3@uspto.gov]. The examiner can normally be reached on M-F 8:30AM- 6:30PM.*

Art Unit: 2112

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Rinehart can be reached on (703) 305-4815 or via e-mail addressed to [mark.rinehart@uspto.gov]. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9306 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-5631.



Kim Huynh

May 27, 2004

Khanh Dang
Primary Examiner